

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

GARRICK HERRINGTON,) No. CV-F-05-624 OWW/GSA
)
)
 Plaintiff,) MEMORANDUM DECISION AND
) ORDER RE PLAINTIFF'S MOTION
) FOR RECONSIDERATION BY
) DISTRICT JUDGE OF MAGISTRATE
) JUDGE'S ORDER (Doc. 57)
)
 vs.)
)
)
)
 A.K. SCRIBNER, et al.,)
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)
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 Defendants.)
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)

Plaintiff, proceeding *in pro per*, has timely filed a motion for reconsideration of the Magistrate Judge's March 12, 2009 Order.

Pursuant to Rule 72-303, Local Rules of Practice, a District Judge upholds a Magistrate Judge's ruling on a referred matter unless it is "clearly erroneous or contrary to law." See Rule 72(a), Federal Rules of Civil Procedure; 28 U.S.C. § 636(b)(1)(A). The "clearly erroneous" standard applies to a Magistrate Judge's findings of fact. *Concrete Pipe & Prods. v.*

1 *Constr. Laborers Pension Trust*, 508 U.S. 602, 623 (1993). "A
2 findings is 'clearly erroneous' when although there is evidence
3 to support it, the reviewing [body] on the entire evidence is
4 left with the definite and firm conviction that a mistake has
5 been committed." *Id.* at 622. The "contrary to law" standard
6 allows independent, plenary review of purely legal determinations
7 by the Magistrate Judge. *FDIC v. Fidelity & Deposit Co. of Md.*,
8 196 F.R.D. 375, 378 (S.D.Cal.2000); *Haines v. Liggett Group,*
9 *Inc.*, 975 F.2d 81, 91 (3rd Cir.1992). "An order is contrary to
10 law when it fails to apply or misapplies relevant statutes, case
11 law, or rules of procedure." *DeFazio v. Wallis*, 459 F.Supp.2d
12 159, 163 (E.D.N.Y.2006).

13 Plaintiff makes no showing that the March 12, 2009 Order is
14 either clearly erroneous or contrary to law. The Order was
15 within the discretion of the Magistrate Judge and he did not
16 abuse that discretion.

17 IT IS SO ORDERED.

18 Dated: April 3, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE